***THE HONOURABLE SRI JUSTICE V.ESWARAIAH**

+WRIT PETITION No.12550 OF 2007

% DATED: 05.09.2007

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Aryan Coal Benefications Pvt.Ltd.,
rep., by its General Manager,
18, Vasant Enclave, Rao Tularam Marg,
New Delhi-110 057.

…PETITIONER

Vs.

$ The Sub Divisional Managing and Sub Collector,
Asifabad,
Adilabad District & two others.

…RESPONDENTS

! COUNSELS FOR THE PETITIONER: SRI NANDIGAM KRISHNA RAO & N.S.PATTABHI RAMA RAO

^ COUNSEL FOR THE RESPONDENTS: GP FOR REVENUE

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>Head Note

? Cases referred

THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No:12550 of 2007

DATED:05-09-2007

BETWEEN:

Aryan Coal Benefications Pvt.Ltd.,
Rep., by its General Manager,
18, Vasant Enclave, Rao Tularam Marg,
New Delhi –110 057.

..... PETITIONER

AND

The Sub-Divisional Magistrate and Sub Collector,
Asifabad,
Asifabad & 2 others.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioner; learned Government Pleader for Revenue appearing for respondents 1 and 3; and the learned standing counsel appearing for the 2nd respondent.

2. Petitioner seeks a writ of mandamus declaring the order of the 1st respondent in Case No.G/469/2007-2, dated 13-04-2007, as illegal, and arbitrary.

3. It is the case of the petitioner company that it purchased an extent of Ac.14.54 cents of agricultural lands in Sy.Nos.127, 135, 147, 149,150 and 151 of Goleti village, Rebbena mandal, Adilabad District vide registered sale deed, dated 06-06-2006, and also obtained pattadar passbook and title deed under the A.P. Rights in Land and Pattadar Pass Books Act, 1971.

4. It is stated that the said agricultural lands have been purchased only for the purpose of leaving the said lands for non agricultural purpose and in order to start a Coal Washing Plant he made an application to the A.P.Pollution Control Board, and the Board issued permission for construction of the Coal Washing

Plant in the said land vide letter, dated
22-08-2006. Petitioner also obtained permission from the Mandal Revenue Officer vide proceedings in Rc.No.C/1100/2006, dated –06-2006, for change of use of the land from agricultural lands to the commercial lands. Petitioner also obtained permission from the Gram Panchayat of Goleti village for construction of Coal Washing Plant in the said land subject to fulfilment of certain terms and conditions. Thereafter, petitioner commenced construction of the Coal Washing Plant and got the machinery ready for establishing the said Plant apart from starting civil constructions on the said land. Whileso, the 2nd respondent-General Manager, Singareni Colleries Company, Bellampalli area made a complaint before the Revenue Divisional Officer on 20-03-2007 and the 1st respondent passed impugned order, dated 13-04-2007, in Case No.G/469/2007-2 while observing that the conversion of the said land issued by the Mandal Revenue Officer, Rebbena is not valid since the perusal of the pahani patrikas of the years, 1996, 1999, and 2001 goes to show that the said lands were used for agricultural purpose with crops of Jowar, and Horsegram. Accordingly, the said certificate issued by the Mandal Revenue Officer, dated –06-2006 was cancelled and the Tahsildar was ordered to stop the work in the said village taken up by the petitioner company and also take the land into Government custody until further orders as it is an agricultural land.

5. It appears one Guptha Coal Washing Plant has also taken up the construction of similar work in Sy.Nos.139 and 142 and the said Guptha Coal Washing Plant was also directed to stop the work in the said land and take the said land into Government custody until further orders.

6. Learned counsel appearing for the petitioner submits that under Section 3 of the A.P. Agricultural Land (Conversion for Non Agricultural Purposes) Act, 2006 (for brevity, 'the Act') no agricultural land in the State of Andhra Pradesh shall be put to non agricultural purposes, without prior permission of the competent authority, and the competent authority to convert the agricultural land for non-agricultural purpose is the Revenue Divisional Officer under Section 5 of the Act.

7. It is stated that in the instant case, the Mandal Revenue Officer is not the competent authority to convert the agricultural land for non agricultural purposes, and in fact, the Mandal Revenue Officer has issued only 'No Objection' certificate for conversion of the said land from agricultural land to commercial land. A perusal of the said certificate goes to show that it is not an order permitting the petitioner to convert the agricultural land to commercial land, but it is only a 'No Objection' Certificate for such conversion. Therefore, it cannot be said that the petitioner has obtained permission from the Mandal Revenue Officer for conversion of the agricultural land for non agricultural purpose but it was only a 'No Objection' Certificate. Admittedly, the competent authority is the Revenue Divisional Officer under Section 5 of the Act.

8. Under Section 4 of the Act every owner or occupier of agricultural land shall have to pay a conversion fee for non agricultural purposes @ 10% of the basic value of the land in areas as may be notified by the Government from time to time. Thus, there is a prohibition for conversion of agricultural land for non-agricultural purpose, but under Section 6 of the Act if any

agricultural land has been put to non agricultural purpose without obtaining the permission as required under Section 3 of the Act, the land shall be deemed to have been converted into non agricultural purpose. Under Section 6(2) of the Act upon such deemed conversion the competent authority shall impose a fine of 50% over and above the conversion fee for the said land specified under Section 4 of the Act. Any such fine amount of Rs.50/- over and above 10% of the conversion fee i.e., total amount of 60% of the basic value of the said land is not paid by way of penalty it is open for the competent authority to recover the same under the A.P.Revenue Recovery Act.

9. A perusal of the Aims and Objects, and the Schemes of the Act goes to show that the agricultural lands shall not be permitted to be converted into non agricultural purpose by the competent authority and if any such conversion is made it is to be made only after taking lumpsum rate of 10% of the basic value of the land as one time measure at the time of conversion. If any occupier or owner of the land puts the land for non agricultural purpose without obtaining permission the penalty that can be imposed is only 50% of the basic value of the land in addition to 10% of the conversion fee under Section 4 of the Act. That is to say, the competent authority can collect only 60% of the basic value of the land only, but there is no other power conferred on the competent authority to issue such a direction to take the land into Government custody or to stop the work taken up by the petitioner. If any constructions were made without taking any permission it is open for the concerned Gram Panchayat to take appropriate action.

10. Under section 10 of the Act for the purpose of giving effect to the provisions of the Act it shall be competent for the Government

to issue such directions as they may deem fit to any Officer, authority or persons subordinate to the Government. If the petitioner is establishing Coal Washing Plant which is detriment to the public health polluting the neighbouring agricultural lands due to the spread of dust particles it is always open for the Pollution Control Board to take appropriate action to prevent or cancel the certificate issued in favour of the petitioner but I am of the opinion that the 1st respondent is not empowered to take the land into Government custody and stop the work.

11. In view of the aforesaid facts and circumstances, the directions issued in the impugned order to stop the work and take over the said land to the Government custody are set aside keeping it open for the respondents to take appropriate action in accordance with law.

12. Accordingly, Writ Petition is disposed of. No order as to costs.

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V. ESWARAIAH,J

05th September, 2007

Note:

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